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IN THE

Supreme Court of the United States

OCTOBER TERM 1969

NO. 35, Original

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

STATE OF MAINE, et al.,

Defendants.

MOTION OF THE STATE OF GEORGIA FOR REFERENCE OF CASE TO A MASTER

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COMES NOW the State of Georgia, a defendant in the above styled proceeding, and joins in the previously filed motions of the States of Delaware, Maine, Maryland, Massachusetts, New Hampshire, Rhode Island, South Carolina, Virginia and New York for reference of the case to a Special Master instructed by the Court to inquire into, consider and prepare detailed findings upon the claims of the various State defendants, including the State of Georgia, to the submerged lands in question. In support of said motion, the State of Georgia shows the Court as follows:

1. In its brief in support of its motion for judgment.

the United States concedes that this Court has not directly adjudicated the rights of the original States in the submerged lands in question [p. 23 of brief]. While the United States appears to contend that evidence is not needed on the point because of this Court's decision in *United States v. California,* 332 U.S. 19 (1947), we think the lack of merit in such contention is seen in the fact that that decision shows on its face that California's claim was rejected for insufficiency of proof. As stated by this Court:

> "From all the wealth of material supplied, however, we cannot say that the thirteen original colonies separately acquired ownership to the three-mile belt or the soil under it, even if they did acquire elements of the sovereignty of the English Crown by their revolution against it." 332 U.S. *at* 31.

For this and the various other reasons which have already been set forth in detail in the motions of the above named co-defendant States, the State of Georgia respectfully submits that crucial threshold questions as to the scope and validity of State claims to the submerged lands can most appropriately be adjudicated by the taking of evidence by a Master. To reiterate all that which has already been said in the motion and supporting argument of Delaware, et al. would be superfluous and of no service to the Court. Suffice it to say that such argument of Delaware, et al. is adopted by reference by the State of Georgia.

2. The contention of the United States that the existence of exploitive rights in the marginal seas was unknown at the time the Union was formed [p. 11 of brief] is directly disputed by the State of Georgia, which is hopeful of being permitted to introduce evidence to

show that in fact such rights were recognized when the Union was formed, and that Georgia neither at that time nor at any time thereafter granted, sold or in any way conveyed "dominium" (as contradistinct from "imperium") rights in the marginal sea to the United States.

3. The State of Georgia further desires the opportunity of introducing evidence to show that whatever the situation may have been as to the existence of a concept of exploitive rights in marginal seas at the time the Union was formed, the United States of America had claimed international sovereignty by 1793 and in any event prior to 1802 when in return for lands received from the State of Georgia under the "Georgia Cession", it ceded to Georgia all of its claim, right and title to lands extending eastward from Georgia's new western boundary and south of the southern boundaries of the States of Tennessee, North Carolina and South Carolina—without reservation or limitation respecting the by then well-recognized rights in the marginal sea.

WHEREFORE, the State of Georgia prays that this its motion that the case be referred to a Master be inquired into and sustained by the Court and that such Special Master be directed to take evidence, inquire into, consider and prepare detailed findings upon the claims of the various States to the submerged lands in question. Should this motion be denied the alternative prayers of Delaware, et al. respecting the reservation of right to introduce evidence directly before the Court and the time

for filing of briefs and oral arguments are adopted by reference as alternative prayers of the State of Georgia.

Respectfully submitted,

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ROBERT SEAVER, C

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OCTOBER TERM, 1968

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Plaintiff,

-vs-

STATE OF FLORIDA,

Defendant.

AMENDED ANSWER OF THE STATE OF FLORIDA

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IN THE

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STATE OF FLORIDA,

Defendant.

AMENDED ANSWER OF
THE STATE OF FLORIDA

COMES NOW the sovereign State of Florida (hereafter for brevity called "Florida"), defendant in this cause by and through its Attorney General, Robert L. Shevin, and in answer to the allegations contained in the numbered paragraph 20 of the plaintiff's Complaint under the heading Thirteenth Cause of Action admits, denies and alleges as follows:

I

In answer to Paragraph I of the plaintiff's Complaint, Florida alleges that such paragraph in its entirety alleges nothing requiring an Answer.

II

In answer to Paragraph II of the plaintiff's Complaint, Florida denies each and every allegation contained in said paragraph.

III

In answer to Paragraph III of the plaintiff's Complaint, Florida denies each and every allegation contained in said paragraph, except as to the existence of Public Law 31 of the 83d Congress, known as the Submerged Lands Act, 67 Statutes at Large 29.

IV

In answer to Paragraph IV of the plaintiff's Complaint, Florida admits that it claims some interest in the seabed, natural resources and subsoil of the continental shelf underlying the Atlantic Ocean and superadjacent waters more than three geographic miles seaward from ordinary low watermark and from the outer limit of inland waters, and insofar as the allegations in said paragraph may be construed to infer that the plaintiff is empowered, in the exercise of its alleged sovereign rights in the above-described submerged lands, to assert any claim with respect thereto which is adverse to Florida, Florida denies such claims by plaintiff entirely.

V

The allegations contained in Paragraph V of the plaintiff's Complaint are not asserted against Florida, and Florida otherwise is without knowledge of any of the allegations contained therein.

VI

In answer to Paragraph VI of the plaintiff's Complaint, Florida denies the allegations contained in said paragraph.

VII

In answer to Paragraph VII of the plaintiff's Complaint, Florida denies the allegations contained in said paragraph, except as to the existence of Public Law 212 of the 83d Congress, known as the Outer Continental Shelf Lands Act, 67 Statutes at Large 462, which speaks for itself.

VIII

In answer to Paragraph VIII of the plaintiff's Complaint, Florida admits that said paragraph, in its entirety is an argument in support of invocation of this Court's jurisdiction, but denies the fundamental question in issue relates to the foreign policy of the United States.

IX

In answer to Paragraph XX not heretofore answered by Paragraphs I through VIII of this Answer, Florida denies the "Atlantic Ocean" includes the straits of Florida.

AFFIRMATIVE DEFENSES

By way of affirmative defenses, Florida alleges as follows:

I

That the body of water referred to in plaintiff's Complaint as the "Straits of Florida" is an arm of the Gulf of Mexico or in the alternative the islands commonly referred to as the Florida Keys, which islands are transgressed by the U. S. Highway No. 1, but also including Elliott Key, Old Rhodes Key, Marquesas Key, Dry Tortugas Islands, and all named and unnamed areas of land above the mean low watermark in this insular chain, are located in the Gulf of Mexico. That because the aforementioned land area of Florida is within the Gulf of Mexico, Florida is entitled to a southern seaward boundary of three (3) marine leagues from its coastline wherever located in this area.

II

That by Act of June 25, 1868, 15 Statutes 73, Congress approved Florida's marine boundaries and that Congress in so approving such boundaries, pursuant to Article IV, Section 3, Clause 2 of the U. S. Constitution and other law existing at that time, did expressly or impliedly convey and grant to Florida whatever interest the United States possessed in the maritime territory within such boundaries without prejudice whatsoever to any constitutional claim to ownership, dominion and control that may have obtained to Florida from said conveyance and grant.

III

That Florida's marine boundaries exceed three (3) geographical miles in part in the Atlantic Ocean and that Public Law 31 of the 83d Congress, known as the Submerged Lands Act, 67 Statutes at Large 29, does not limit a state's interest under said act to three (3) geographical miles in the Atlantic, but instead provides that any state's seaward boundary beyond three (3) geographical miles is not prejudiced or questioned by said act where such seaward boundaries have been heretofore approved by Congress.

WHEREFORE, Florida prays that a decree be entered declaring its rights

as against the plaintiff in the seabed subsoil and superadjacent waters of the Atlantic Ocean adjacent to its coastline and to the limit of its congressionally approved boundary; and for its cost.

COUNTERCLAIM

The defendant, State of Florida, hereby files this claim against the plaintiff United States of America and as grounds therefore, alleges:

1. The Congress of the United States, by the aforementioned act of readmission of Florida to representation to Congress did thereby, subsequent to Florida's admission to the Union, grant to the State of Florida the submerged lands and superadjacent waters within the marine boundaries specifically set forth in the constitution approved by said act of readmission.

2. Title to said submerged lands, covering at least 509,224 square acres in the Atlantic Ocean, was thus vested in the State of Florida.

3. By now denying said title of the State of Florida, the United States of America is seeking to take said property without just compensation.

WHEREFORE, the State of Florida asks damages from the United States of America in excess of $51,000,000 (fifty-one million dollars) and hereby demands

trial by jury on said claim pursuant to 28 U.S.C. §1872. See Georgia v. Brailsford, 3 Dall. 1 (1794).

DATED this 28th day of January, 1971.

Respectfully submitted,

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Attorney General

STUART L. SIMON
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W. ROBERT OLIVE, JR.
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32304

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of January, 1971, a copy of this Amended Answer, Affirmative Defenses and Counterclaim was mailed, postage prepaid, to Honorable John N. Mitchell, Attorney General of the United States, and Honorable Erwin N. Griswold, Solicitor General of the United States, Department of Justice, Washington, D. C. 20530.

W. ROBERT OLIVE, JR.
Assistant Attorney General